

## **The complaint**

Mr S complains about how Bank of Scotland plc trading as Halifax responded to his request to reduce the term of his mortgage. And he complains about what happened when he asked for a recording of the call where this was discussed.

## **What happened**

Mr S told us he wanted to complain about how he'd been sold a new mortgage deal, which happened over the phone during lockdown. Mr S wanted to listen to this call again, and particularly what Halifax had said about reducing the term of his mortgage, before he advanced his complaint about this. Mr S said he'd requested the calls where this product was sold, and he wanted to complain about how these were sent to him. He said Halifax had breached data protection legislation by sending these outside of the stipulated time, without passwords to access the data, and in faulty formats.

Mr S said when he complained to Halifax about the problem with the call recordings, it just started to send him £50 cheques, but it never rectified the problem. He said he still couldn't tell whether he'd been financially affected, because he hadn't been able to review the requested information.

Halifax said it didn't think it had done anything wrong by turning down Mr S's request to reduce the term of his mortgage. And it said that it had sent call recordings to Mr S on 21 June, within a month of his request, so it didn't think it had breached any legislation. Halifax said it recognised Mr S's concerns, and it had offered him compensation of £300. Halifax thought that was a fair and reasonable outcome to this complaint.

Our investigator didn't think this complaint should be upheld. He thought it was fair for Halifax to refuse to shorten the term of Mr S's mortgage at a time when his income was severely affected by lockdown. He said Halifax had recognised that its service when sending call recordings was below the level it looks to provide, and our investigator agreed. He also agreed that continuing to receive letters from Halifax, after Mr S told Halifax that communication by letter wasn't suitable for him, would have been distressing for him. But our investigator said he did think that an apology and offer of £300 was fair in the circumstances of this case, so he wouldn't ask Halifax to increase this further.

Mr S didn't agree. He said that £300 was insulting, and he didn't think Halifax had sent the information he had a right to, in time. Our investigator said our service doesn't fine or punish businesses for not supplying information quickly enough. We look at the impact on the individual. And here, he thought the offer made was fair.

Mr S wanted us to clarify what the £300 was for, and our investigator said it was for all the areas of distress and inconvenience caused to Mr S. And our investigator said if Mr S wanted, we could send the call recording he hadn't been able to listen to.

Mr S didn't agree. He still thought the deadline for supplying information had been missed, and he said Halifax had ignored what he told it about his dyslexia when communicating with him. He thought that if Halifax had refused to send us information, we'd have fined it much

more than the £300 he was being offered.

Our investigator stressed that we don't fine businesses. And, because no agreement was reached, he passed this case to me for a final decision. I then reached my provisional decision on this case.

### **My provisional decision**

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

Mr S's complaint to our service hasn't focussed on whether he should have been allowed to change the term of his mortgage. He's asked our service to look into whether Halifax has breached data protection legislation. He asked it for recordings to refresh his memory about what happened when he had a call with Halifax, discussing a possible change to his mortgage term. He's unhappy with how Halifax responded to that request. And he's expressed concern about how Halifax communicated with him.

Halifax has treated this as part of Mr S's original complaint, about whether he should have been allowed to reduce the term of his mortgage when he took out a new mortgage deal in May 2020. And I think it's appropriate for our service to resolve this issue for Mr S too.

On 12 May 2020, Mr S spoke to Halifax about a new mortgage deal. At that time, he was self-employed, and the nature of his job meant his income had been significantly affected by the COVID-19 pandemic. Mr S was meeting his mortgage payments using savings, and although he said he could continue to do this comfortably for some time, Halifax said it wouldn't be appropriate to reduce the term of his mortgage at that time.

I have listened to the relevant call, and I can confirm that this is what I can hear on the call. Mr S had said his recollection was that he was told that he would need to go into a branch to reduce the term of his mortgage. Halifax did say he would need to go to a branch, but that was because his date of birth was wrongly recorded on its files, and it said it would need to correct this before he could make changes to his mortgage.

Halifax then went on to explain that as Mr S was self-employed and not able to work at the moment, it wouldn't be able to reduce the term of his mortgage, as he didn't have an income at that time. Halifax explained that, if Mr S took out a new deal on this call, although he would then be tied in to a particular interest rate for a fixed period, he could still make changes to the term of his mortgage during this time. And it also told him how he could make overpayments, if he wanted.

I think that's a reasonable view for Halifax to have taken at the time. I don't think it had to reduce Mr S's mortgage term for him, at a time when his income had been very significantly impacted, and no one was able to confidently predict when it might be reinstated.

I've also listened to the calls Mr S had more recently, to raise his concerns about the sale of his new mortgage product, when he said he should have been allowed to reduce the term of his mortgage but was told he couldn't. Mr S raised this complaint with Halifax on 6 June 2022. I do think Mr S asked to hear the recording of the call that he had about his mortgage then. I also note that the call handler told Mr S that he thought recordings were sent out on a disc, and Mr S said this was fine. I haven't heard that Mr S requested any particular format, or confirmed that he had any particular needs, on this call.

It took a little while for Halifax to get these calls sent to him. It said on 14 June that the recordings would be on their way soon. There was then some confusion, as Halifax apologised for the delay on 23 June, and then after this, said it had made a mistake, and recordings had already been sent on 21 June.

I understand Mr S says he didn't receive these recordings, he only received the later ones. But I've seen internal emails which suggest the recordings were sent on 21 June. I think it's likely they were sent then, but I also think it was unhelpful for Halifax to then give Mr S conflicting information about whether they were sent.

I can also see that after this, Halifax claimed it hadn't breached data protection rules which require it to supply information within a month of the request, because it had supplied this information by mid-July. At this point, Halifax appears to have been working on the basis that the start date for this deadline was when documents were requested internally, not when Mr S had asked for them. That was clearly a mistake, and Halifax has recognised this since in its communications with Mr S. However, I think this mistake has both upset Mr S and prolonged this complaint for him. And I'll bear that in mind when I'm thinking about compensation.

Mr S says he's never had the call recordings he wanted in a format that he could listen to. However, I can't see that Halifax had agreed at the outset to send these recordings in an audio CD format. And I can see that later in his complaint, Halifax did say it would try to send these to him in a different form. Mr S said he didn't want the recordings sent at that time. Our investigator has since repeated this offer, and Mr S hasn't taken our service up on this.

Mr S also complained that Halifax was writing to him, which he'd repeatedly said wasn't the best way to contact him, because of his dyslexia. I think that Halifax was initially content to call Mr S, but he did then ask it not to, as he was concerned about its record keeping. He asked for communication by email.

Halifax said to Mr S that it wouldn't want to send a complaint response by email, because that wasn't a secure method of communication, so it would write to him about this. Halifax had sent Mr S its first complaint response letter, before Mr S told Halifax that this wasn't a suitable method of communication. But I note that Halifax continued to send letters after this. It did suggest that it could put in place a third party authority on Mr S's account, in response to his comment that he might need this. And Halifax said it would discuss with him other ways for it to communicate with him.

Mr S, not unreasonably, pointed out that the letters Halifax continued to send him didn't contain personal information about his accounts or mortgage, and he asked why Halifax couldn't email him.

I think it was unhelpful for Halifax to continue to write letters to Mr S once he'd explained that he was having difficulty with these. I can see that Halifax did make some attempts to offer different support to Mr S, but I note that it made attempts to do this through its letters, which doesn't appear to me to have been appropriate, given that Mr S had clearly explained that he was dyslexic, and that he had difficulties with reading. Halifax did have another line of communication open with Mr S, through email, and I think Halifax's offers of support should have been made there.

I understand that Halifax has since apologised for the mistakes it made in this case, and it has offered Mr S an additional payment of £300, on top of the £50 it previously sent (which Mr S said he didn't accept). I know that Mr S feels he's been let down very badly

by Halifax. And I can see that there has been confusion, and unhelpful communications from Halifax.

It's worth noting that the FCA's guidance for dealing with vulnerable consumers says that businesses should understand the needs of their target market / customer base, ensure their staff have the right skills and capability to recognise and respond to the needs of vulnerable customers and respond to customer needs through product design, flexible customer service and provision and communications. Although Halifax did attempt to make adjustments here, Mr S was clearly let down by the way the process was put in place, as letters continued to be sent to him. And the offers of support, which may have avoided the issue of those letters, were contained in the letters themselves. So I agree that Halifax ought to pay a little more in this case.

I think a total payment of £500 would provide a fair and reasonable outcome to this complaint. I'll allow Halifax to count towards that amount, any payment it has already made to Mr S. For the avoidance of doubt, that would only include any cheque for £50 that Halifax previously sent him, if it can show that these were cashed.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Halifax replied to say it didn't have any further comments, and would accept the decision.

Mr S also replied. He said he was very disappointed in my decision, which he said was full of errors. Our investigator asked Mr S to elaborate, and he mentioned a typo in my provisional decision, where I'd referred to Mr S requesting to extend, rather than reduce, the term of his mortgage. I do think it's clear from the decision as a whole that this was an unfortunate typo, rather than a fundamental misunderstanding about the nature of Mr S's complaint. I'd like to apologise to Mr S for that, and I have corrected this in the text above.

Mr S also said that I'd contradicted myself, by saying *'I noted the call handler did tell Mr S he believes call would be sent in disc format'* but then following this by saying *'I cannot see where Halifax suggested they would be sent in disc format.'* That's not quite what my decision says.

I heard the call handler, on the call recording from 6 June, telling Mr S he thought the call recordings would be sent on a disc. But Mr S later said he'd been told, on that specific call, that the recording would not just be on a disc, but also in an audio format. Mr S said he'd been reassured that he would be able to listen to the recordings by putting the disc in a CD player. I haven't been able to hear that Mr S did ask for that particular disc format, or that Halifax had offered or agreed to that.

Halifax did later send a disc. But it wasn't an audio disc, it was a data disc, so Mr S could only listen to calls by playing this disc on a computer. Mr S said then that *"I have now learnt this cannot be used on a CD player as informed in the original complaint call."* I don't think that's right, because I don't think Halifax did say that, on the first call.

Mr S said there was very little mention of how he repeatedly asked for communication via email due to difficulties, yet Halifax continued to ignore further requests and continue to

communicate by letter, despite his highlighting no account information was included in the correspondence.

I do think I have reflected this point, in particular at the end of the third page, where I said that Mr S “...asked for communication by email.” I then said that “... I note that Halifax continued to send letters after this.” And I noted that “Mr S, not unreasonably, pointed out that the letters Halifax continued to send him didn’t contain personal information about his accounts or mortgage, and he asked why Halifax couldn’t email him.”

My decision also notes that Halifax did offer Mr S support and alternative ways of communication, but I expressed disappointment that these offers were made in letters that Halifax sent to Mr S. That’s a format Mr S told Halifax he was having difficulty with.

I think my decision is clear that “I think it was unhelpful for Halifax to continue to write letters to Mr S once he’d explained that he was having difficulty with these.” And this was a key part of why Mr S’s complaint was upheld.

Mr S said there was no mention of the last phonecall he received from Halifax agreeing that it had failed, yet refusing to acknowledge this when discussing a solution on later emails.

It’s not clear what failure Mr S is referring to here. Mr S said on 19 July that he was refusing any future calls, and before this, his calls discussed issuing the requested recording, and whether or not Halifax had sent this to him. I said in my provisional decision that I could see Halifax told Mr S on 23 June that it hadn’t yet issued the calls, but it then corrected this, and said they had been sent after all, on 21 June. I explained in my provisional decision that I thought the calls were first sent on 21 June. And that, in turn, means I didn’t think Halifax failed to issue call recordings within a month of Mr S’s request.

Mr S said that the cheques for £50 that Halifax sent had been destroyed. My provisional decision only allows Halifax to deduct money it’s previously paid Mr S, if it can show that those cheques have been cashed.

Mr S then wrote again. He said that my provisional decision noted that I’d seen internal emails which suggested the call recordings he wanted were sent on 21 June. Mr S wanted me to confirm whether I had witnessed evidence that proved the information was sent at the time, or only emails suggesting they were sent. He said he’d repeatedly asked for proof that this email was sent, before raising this complaint, but hadn’t been sent that.

My provisional decision says this “I understand Mr S says he didn’t receive these recordings, he only received the later ones. But I’ve seen internal emails which suggest the recordings were sent on 21 June. I think it’s likely they were sent then...”

I can see that Mr S emailed Halifax on 7 July to say he presumed the recordings were being withheld from him, as he hadn’t received them. I have seen an internal email, dated 13 July, where the complaint manager checks with a colleague to see whether the recordings had been sent to Mr S or not. That colleague replied to say they had been sent on 21 June. On 14 July, the complaint manager told Mr S the recordings had been sent on 21 June, and said she would send them again. Mr S later said he didn’t receive this email either.

Whilst this email chain doesn’t prove beyond any possibility of doubt that the mails to Mr S with the requested call recordings were sent, that’s not unusual. In cases like this, I have to decide what’s most likely to have happened. And, having considered these emails in the overall context of this case, I think what is most likely to have happened here is that they were sent. I don’t know why the first or second email wasn’t safely received by Mr S, but I haven’t been able to see that this is likely to be Halifax’s fault.

Mr S said he wanted to know if the email was sent, so he could tell whether this was an issue of bad communication, or if Halifax had breached the guidelines by failing to send out the requested information during the correct time period. I do think it's most likely that this is a case of bad communication by Halifax. I think it did try to get the documents to Mr S, within the required timescale.

But I noted in my provisional decision that it was very unhelpful for Halifax to make two mistakes about this – that it initially said the recordings hadn't been sent on 21 June, and that it also said supplying them in July would still meet the deadlines.

My provisional decision above notes that I thought this had “...*both upset Mr S and prolonged this complaint for him.*” And that's another reason my decision was to uphold his complaint.

For the reasons set out above, I haven't changed my mind. I'll now make the decision I originally proposed.

### **My final decision**

My final decision is that Bank of Scotland plc trading as Halifax must pay Mr S a total of £500 in compensation. Bank of Scotland plc trading as Halifax can count towards that amount, any payment it has already made to Mr S for this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 25 October 2023.

Esther Absalom-Gough  
**Ombudsman**